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Wednesday, August 8, 2001  
UNITED STATES BANKRUPTCY COURT  
  
NORTHERN DISTRICT OF CALIFORNIA

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In re

GARY M. IZING,

No. 00-11606

[Debtor](#)  (s).

\_\_\_\_\_ /

ROBERT HEYDENFELDT,

[Plaintiff](#)  (s),

v.

A.P. No. 00-1142

GARY M. IZING,

[Defendant](#)  (s).

\_\_\_\_\_ /

## **Memorandum of Decision**

In September, 1993, debtor and defendant Gary Izing approached plaintiff Robert Heydenfeldt about investing in a business venture called "The Harmonic Connection," a telephone astrology service. Izing and Heydenfeldt had done successful business in the past, so Heydenfeldt was interested, but wanted verification from Izing that Izing had, as represented, invested \$50,000.00 in the venture himself to match the \$50,000.00 he wanted Heydenfeldt to invest. On September 10, 1993, Izing sent Heydenfeldt a letter and attached accounting showing that he or his businesses had spent about \$30,000.00 on the venture already and that "The present balance on account for THC is \$20,765.05 held at Bank of America in San Rafael, CA." Heydenfeldt reasonably relied on this representation, and would not have made the investment otherwise. The venture ultimately failed and Heydenfeldt recovered nothing on his investment. In this [adversary proceeding](#), he seeks a determination that his [claim](#) against Izing is nondischargeable pursuant to § 523(a)(2) of the [Bankruptcy Code](#). The representation regarding the bank account was not true. In fact, THC had less than \$1,000.00 in the bank. Izing admits the falsity, but alleges that it was an innocent mistake and that he had "budgeted" a full \$50,000.00 of his funds to the venture. The only real issue in this case is whether Izing made the misrepresentation with the intent to defraud. From the evidence presented, the court finds that the misrepresentation was made with fraudulent intent. Two facts compel the court to this conclusion. First, Izing had no other funds, either in personal bank accounts or the accounts of his business entities, which he could use to pursue the THC venture.<sup>(1)</sup> Second, about half of Heydenfeldt's money ended up in Izing's pocket, or was used to pay the debts of Izing's other businesses, within a matter of days after Heydenfeldt gave it to Izing. While Izing may have intended ultimately to go forward with the project, his immediate goal in seeking funds from Heydenfeldt was to obtain money for his own expenses. He misrepresented his share of the venture's capitalization in order to further this purpose. His debt to Heydenfeldt is accordingly nondischargeable. For the foregoing reasons, a nondischargeable judgment shall be entered against Izing in the amount of \$50,000.00, plus interest at the federal legal rate from and after September 10, 1993. Heydenfeldt shall also recover his costs of suit. This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for Heydenfeldt shall submit an appropriate form of judgment forthwith.

Dated: August 8, 2001

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Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)

1. Izing represented to the court that he had over \$100,000.00 in cash at the time, which he was hiding from the IRS. While the court finds this story implausible, it hardly cuts in favor of Izing if true. Such concealment is not the conduct of an honest d

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